

PROPOSED CHANGES TO SECTION VII – SPECIAL REGULATIONS – 1-1 & 2.1

~~Strikethrough~~ indicates language proposed for deletion

Underline indicates language proposed for inclusion

Italicized Words indicate corresponding definition found in the Bylaw

Highlighted Text indicates administrative information items for Planning Board 03/25/08 meeting

1-12. Affordable ~~Apartment Incidental to a Single Family Dwelling~~ Housing

Intent:

~~The intent of this section is to provide some affordable housing to meet the needs of Chatham's residents and workers. This section sets forth standards and conditions for Affordable Apartments Incidental to a Single Family Dwelling. The standards are intended to be consistent with those recommended by the Cape Cod Commission for use by Towns. It is also intended that "affordable" units required and approved under this Bylaw Remain affordable.~~

Heading change proposed to more accurately reflect the restructured Section 2 to cover Affordable Housing

Purpose and Intent

The purpose of this Section is to implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Comprehensive Plan, MGL Ch. 40B Sec. 20-23 and related ongoing programs within the Town to promote the creation of housing that is *affordable*. It is intended that the *affordable* housing units resulting from this Section be considered *Local Initiative Program (LIP)* dwelling units in compliance with the requirements specified by the Massachusetts Department of Housing and Community Development (DHCD) and that said units count toward the Town's requirements under MGL Ch. 40B Sec. 20-23 on the *Subsidized Housing Inventory (SHI)*. The overall intent of this Section is to:

"Preamble" converted to "Purpose and Intent" paragraph to better articulate the broader planning goals of the restructured Section 2. A supporting document outlining the format changes in the overall context of Section VII has been developed to facilitate understanding of the restructuring.

- Provide opportunities to create various types of quality dwelling units *affordable* to low or moderate income households.
- Promote geographic distribution of *affordable* housing units throughout the Town and avoid over-concentration.
- Promote creation of dwelling units compatible with neighborhood and overall community character.
- Promote the creation of units eligible for the Chapter 40B *Subsidized Housing Inventory (SHI)*.
- Help maintain a stable economy by preventing out-migration of residents who provide essential services.

Proposed bullets provide more specific expression of the overall intent of the Affordable Housing Section in the Protective Bylaw.

2-1. Definitions:

Affordable, used in reference to dwelling units means intended for rental or sale to low or moderate *income* *eligible people* ~~households~~ and in conformance with the requirements of this Bylaw Section in regard to price and income level of tenant(s).

*Reference to "income eligible" definition added to reinforce that **affordable** in the Bylaw means households not exceeding 80% of Area Median Income*

Affordable Apartment, Incidental to a Commercial Use or Industrial Use means a dwelling unit intended for rental or sale to low or moderate *income eligible* households and in conformance with the requirements of this Section in regard to price and income level of tenant (s) located either within a commercial or industrial structure, or on a commercial or industrial lot where at least 51% of the total floor area of the building(s) above finish grade is utilized for commercial or industrial purposes.

This new definition is proposed to correspond with the suggested amendments to Section VII. 4, to increase affordable housing opportunities in Commercial and Industrial Districts

Affordable Apartment Incidental to a Single Family Dwelling means a dwelling unit subordinate to a one-family dwelling approved on the condition that the requirements of this ~~Bylaw~~Section are met for affordable price and income eligible tenants.

Affordable Price, used in reference to a dwelling unit, means ~~housing costs a monthly rent or mortgage payment~~ housing costs which does not exceed 30% of the gross monthly income of a household whose income is 70% of the median income for Barnstable County as reported by the United States Department of *Housing and Urban Development (HUD)*.

This change is proposed to make the Chatham's definition consistent with that used by regional, state and federal programs as recommended by the Cape Cod Commission.

Area Median Income (AMI) - The estimated median income, adjusted for family size, by county or metropolitan area. The *AMI* is adjusted annually by HUD.

Chatham Housing Authority – The local Housing Authority organized pursuant to Massachusetts General Laws, Chapter 121B, Section 3.

Deed Restriction – An executed restriction in a form acceptable to the Special Permit Granting Authority (SPGA), recorded with the Barnstable County Registry of Deeds.

Department of Housing and Community Development (DHCD) – The Massachusetts agency that oversees State funded programs and other funding incentives to promote affordable housing. *DHCD* keeps the individual communities affordable housing units inventory, and determines or “certifies” what “counts” as affordable housing. (see *Subsidized Housing Inventory*)

Additional affordable housing specific definitions added to improve understanding of entities and terms involved in the creation of affordable housing.

Housing Costs, for rental units include rent and utilities; while housing costs for ownership units include mortgage principal and interest, property taxes, property insurance, mortgage insurance, and condominium and/or homeowners' association fees.

Housing and Urban Development (HUD) - The Federal agency responsible for addressing the nation's housing needs and development of nation's community, as well as for enforcing of fair housing laws and for helping local communities meet development needs.

Income Eligible means that the household income of a person or family does not exceed 80% of the median income, adjusted for household size, for Barnstable County as reported by the United States Department of Housing and Urban Development (HUD).

Local Action Units (LAU) - *Affordable* units built pursuant to a local action such as a zoning provision, a condition of a variance or special permit issued by the planning board or zoning board of appeals, a contract provision (e.g., reuse of municipal or school building as housing), or an agreement between the town and a non-profit organization to build or rehabilitate municipal buildings into housing. This component of the *LIP* gives communities the opportunity to include housing units on the state's *Subsidized Housing Inventory* that were built without a Comprehensive Permit but which meet *LIP* criteria.

Local Initiative Program (LIP) A State program under which communities may use local resources and technical assistance from *DHCD* to develop affordable housing pursuant to 760 CMR 45.00-45.07.

Local Program Administrator (LPA) - Entity responsible for oversight of *affordable* units. This could be a local official, a local housing partnership board member or staff member, the director of an area housing non-profit organization, or another appropriate person meeting *DHCD* approval.

Subsidized Housing Inventory (SHI) - *DHCD*'s official list of units, by municipality, that counts toward a community's 10% goal.

2-2. Affordable Rental Units

Dwelling units created for rental purposes required to be *affordable* or approved under this Section with the condition that they are *affordable* shall be subject to the following:

- A. Rental dwelling units required or approved under this Section as *affordable* shall meet the definition of *affordable price* as set forth in this Section. Certification by the *LPA* that the price is an *affordable price* shall be provided to the Zoning Enforcement Officer.
- B. Any dwelling approved under this Section as an *affordable* rental unit shall be rented subject to a minimum 12-month lease.
- C. For any dwelling unit required or approved as an *affordable* rental under this Section, certification by the *LPA* that the tenants occupying the *affordable* unit are *income eligible* and the rent charged them is *affordable* per the definitions in this Section must be submitted to the Zoning Enforcement Officer at the time of the signing of the lease and on an annual basis thereafter. Such certification is also required upon any change in tenants or rent charged. Dates of occupancy shall be stated in the certification.
- D. Owners of *affordable* units created under this Section shall be encouraged to rent the units to Chatham residents, workers, or people with ties to the community.
- E. *Affordable* accessory apartment units shall be subject to *affordable* housing use restrictions that are executed by the homeowner, the Municipality, and *DHCD* and filed by the *LPA* in the Registry of Deeds/Land Court Registry District subject to the following provisions regarding the early termination of such restrictions:
 - 1. Tenant Notice

In all cases, the owner must provide an existing tenant at least 60 days prior written notice that his or her lease will not be renewed.
 - 2. Restrictions that either terminate automatically or are revocable by the owner upon transfer of the property.

If the restriction terminates and is not renewed by the new owner, the municipality must notify *DHCD*. The unit will no longer be deemed a *Local Action Unit* and will be removed from the *Subsidized Housing Inventory* unless the new owner obtains municipal approval to rent the accessory apartment and enters into an *affordable* housing restriction in the form approved by *DHCD*.

This new Section establishes the requirements for all affordable rental units created under the Bylaw. This proposed structure lends itself to be "linked-to" other sections of the Bylaw that may be revised in the future as recommended in the Comprehensive Plan to add additional affordable housing provisions/requirements (i.e., multi-family development in neighborhood centers etc.)

This section has been added to highlight the revised LIP guidelines, spelling out the parameters of required use restrictions and details of early termination of use restrictions.

Recent changes to the LIP guidelines add flexibility to the required restrictions to get units to count towards the 10% goal, by removing the 15 and 30 year restrictions for rehabilitated units and new units respectively and by clarifying conditions to terminate participation by the homeowner (lower barrier to entry).

3. Restrictions that allow the owner to voluntarily terminate the restriction and cancel a Special Permit at the end of a tenant's lease term.

Voluntary termination may occur only after the owner has rented the accessory apartment to *income eligible* tenants for five (5) years. The municipality must notify DHCD that the restriction has been voluntarily terminated, and the unit will no longer be deemed a *Local Action Unit* and will be removed from the *Subsidized Housing Inventory*.

4. Removal of Deed Restriction

In the event that an owner of such dwelling unit decides not to continue with the program, then the Affordable Housing Restriction recorded as a *deed restriction* shall be discharged by recording an appropriate document executed by the *LPA*.

2-3. Affordable Homeownership Units

Dwelling units created for homeownership purposes required to be *affordable* or approved under this Section with the condition that they are *affordable* shall be subject to the following requirements:

- A. Any homeownership dwelling unit required or approved under this Section as *affordable* shall meet the definition of an *affordable price* as set forth in this Section. Certification by the *LPA* that the price is an *affordable price* shall be provided to the Zoning Enforcement Officer.
- B. At the time of the sale of any homeownership dwelling units approved or required under this Section as *affordable*, certification by the *LPA* shall be provided to the Zoning Enforcement Officer that the purchaser is *income eligible* as defined in this Section.
- C. A deed restriction shall be placed upon the property limiting the resale price in perpetuity. The formula for setting the resale price shall be as follows; at the time of the original purchase, a multiplier shall be determined by dividing the sales price by the *Area Median Income (AMI)* for Barnstable County as provided by the United States Department of *Housing and Urban Development (HUD)*. At the time of sale of the unit, the multiplier times the *AMI* at the time of the sale shall be the maximum sale price.
- D. If a unit is offered for sale, the purchaser and the Town shall sign an agreement setting forth the procedure for establishing a resale price to keep the unit affordable in perpetuity upon its sale and granting the Town the right of first refusal should the seller fail to enter into a bona fide purchase and sale agreement with an *income eligible* buyer within ninety (90) days of the date that the unit is originally offered for sale.
- E. In the permitting and certification process, owners of affordable units created under this Section shall be encouraged to sell the units to Chatham residents, workers, or people with ties to the community.

Section 2-3 establishes the requirements for all homeownership units created under the Bylaw. This structure lends itself to be "linked-to" other sections of the Bylaw that may be revised to add affordable provisions/requirements (e.g., conversion of uses, etc.)

2-4. Affordable Apartment Incidental to a Single Family Dwelling

A. Intent and Purpose

Affordable Rental Housing - The intent of this section is to provide opportunities to create *affordable* rental housing to meet the needs of Chatham's residents and workers. This section sets forth standards and conditions for *Affordable Apartments Incidental to a Single Family Dwelling*. The standards are intended to be consistent with those recommended by the Cape Cod Commission for use by Towns. It is also intended that *affordable* units required and approved under this Section remain *affordable*.

Un-permitted Apartments - As well as allowing the construction of new dwelling unit accessory to existing single-family homes to create additional *affordable* housing, this Section also provides an opportunity to bring into compliance currently un-permitted accessory apartments and apartment units in Chatham. This Section recognizes that although un-permitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been lawfully constructed and occupied. It is in the public interest and in concert with its obligations under state law, for the Town of Chatham to offer a means by which un-permitted and illegal dwelling units can achieve lawful status, but only in the manner described in this Section.

Since the adoption of the former Section 1-1 in 2004, no affordable units have been created under this provision. This Section has been revised based upon the successful program implemented by the Town of Barnstable for creating affordable accessory apartments.

The proposed approach also includes a mechanism for an "Amnesty Program" as recommended in the Comprehensive Plan, Planned Production Plan and at the 2007 Housing Summit. See Sub-Section C. below.

B. New Affordable Apartment Incidental to a Single Family Dwelling.

1. General:

- a. No more than ~~10~~² Special Permits acted upon in the order received shall be granted for *Affordable Apartments Incidental to a Single Family Dwelling* in any 12-month period.
- b. *Affordable Apartments Incidental to a Single Family Dwelling* are allowed by Special Permit approved by the Zoning Board of Appeals in all districts except Municipal Conservancy (M/C) and Industrial (I) as set forth in this section.
- c. The Zoning Board of Appeals shall solicit comments on the proposal from other Town regulatory agencies which have jurisdiction in the particular case, and prior to acting upon the application, the Zoning Board shall consider any comments received from such agencies.

Proposed format employed to differentiate between potential new and "amnesty" units.

Proposed increase in limit of annual Special Permits from 10 to 12 to correspond with Town's Affordable Housing Planned Production Plan goals to create additional units.

2. Conditions:

All *Affordable Apartments Incidental to a Single Family Dwelling* shall be subject to the following conditions:

- a. No *affordable* apartment shall be approved in addition to a *Guest House* on a single family lot.

Conditions from previous version of the bylaw have been retained with minor revisions to reflect proposed program and bylaw format changes.

- b. Either the proposed apartment or the principal dwelling may be proposed to be rented as *affordable*, provided the property owner occupies the unit which is not designated as *affordable*. A change in the designation of which unit is *affordable* shall require an amendment to the Special Permit.
- c. The owner of the property must dwell in either the apartment or in the principal dwelling unit and shall not rent both the apartment and principal dwelling unit at the same time.

d. An owner of a property containing an accessory apartment who is absent for a period of less than two (2) years may rent the owner's unit as well as the second unit during the temporary absence provided: written notice thereof shall be made to the Zoning Enforcement Officer or designee on a form prescribed by him/her and that the owner shall be a resident of the property for at least two year prior to and between such temporary absences.

Added provision to account for the temporary absence of property owner.

d.e. The owner of the property must meet and adhere to the requirements for an *affordable* dwelling unit as set forth in this Section.

This waiver provision is added to give the ZBA greater flexibility in considering a wider range of proposals, ~~currently~~ Currently, approximately only 52% of residential lots in Chatham contain a gross area of 20,000 sq. ft. The intent of this proposed revision is to broaden this opportunity to a greater number of resident property owners.

e.f. Application may be made for a Special Permit under this section provided the property where the apartment is to be located has a minimum of 20,000 square feet of *buildable upland* area unless specifically waived by the Zoning Board of Appeals.

f.g. ***Affordable Apartments Incidental to a Single Family Dwelling*** shall meet all applicable State and local requirements for the establishment of dwelling units, including the Board of Health regulations limiting the number of bedrooms, Building Code, Wetlands Protection Regulations and other approvals as necessary.

g.h. Unless specifically waived by the Zoning Board of Appeals, ~~two-at least~~ one (1) parking spaces shall be provided for the *affordable* apartment in addition to the two parking spaces required for the single family dwelling.

h.i. The Special Permit shall lapse in the event that the *affordable* apartment is not used for a period of two years. Upon application by the owner, the Zoning Board of Appeals may reinstate the Special Permit after a public hearing. If the reinstatement is not requested or is denied by the Zoning Board, the Zoning Enforcement Officer may order that the kitchen be removed from the apartment.

i.j. The Zoning Enforcement Officer has the authority to order the kitchen to be removed from the *affordable* apartment upon finding a violation of the conditions of the Special Permit issued under this section and in the event that the owner does not correct the violation in a timely manner, after being given proper notice.

j.k. The *affordable* apartment may be part of the principal dwelling or in a separate building accessory to the single family dwelling.

l. The site shall provide for privacy, ~~noise reduction~~, and outdoor recreation area for the tenants of the apartment.

Noise reduction removed as it is covered under "Review Criteria" below.

3. Special Permit Review Criteria:

Title Changed for consistency with Section 2-5

___ In addition to the ~~review criteria~~conditions for Special Permits set forth in this ~~Bylaw~~Section, the following criteria shall be used in the review of all Special Permits for *Affordable Apartments Incidental to a Single Family Dwelling*:

- a. Adequacy and suitability of the site for the addition of the apartment, whether or not new construction is proposed, with consideration of the size and shape of the site, access to the site, location of existing and proposed buildings, topography of the site and surrounding area, and existing vegetation.
- b. Impact of the proposal upon the abutters and the neighborhood, including such considerations as the size of the unit proposed, location of the unit on the site, ~~proximity of the unit to the abutters~~, layout of parking provided, and location of the outdoor use area for the unit.

Conditions for Affordable Dwelling Units:

~~Dwelling units required to be **affordable** or approved under this Bylaw with the condition that they are **affordable** shall be subject to the requirements of this section.~~

These conditions for affordable dwelling units have been retained and moved to Section 2-2 - Affordable Rental Units.

- ~~* Any dwelling unit required or approved under this Bylaw as **affordable** shall meet the definition of **affordable price** as set forth in this Bylaw. Certification by the Chatham Housing Authority that the price is an "**affordable price**" shall be provided to the Zoning Enforcement Officer.~~
- ~~* Any dwelling approved under this Bylaw as an affordable rental unit shall be rented subject to a minimum 12-month lease.~~
- ~~* For any dwelling unit required or approved as an affordable rental under this Bylaw, certification by the Chatham Housing Authority that the tenants occupying the affordable unit are **income eligible** and the rent charged them is **affordable** per the definitions in this Bylaw must be submitted to the Zoning Enforcement Officer at the time of the signing of the lease and on an annual basis thereafter. Such certification is also required upon any change in tenants or rent charged. Dates of occupancy shall be stated in the certification.~~
- ~~* Owners of **affordable** units created under this Bylaw shall be encouraged to rent the units to Chatham residents, worker, or people with ties to the community.~~

4. Conditions of Approval:

___ The Zoning Board may impose conditions upon the approval of a Special Permit for an *affordable* apartment incidental to a single family dwelling in keeping with the review criteria, and such conditions may include a limit on the number of people who can occupy the affordable unit.

C. Amnesty Program.

Recognizing that the success of this Section depends, in part, on the admission by real property owners that their property may be in violation of the Zoning Bylaw of the Town, the Town hereby establishes the following Amnesty Program.

Proposed "Amnesty Program" modeled on that instituted in Barnstable as noted above.

1. Threshold Criteria

The threshold criteria for units being considered as units potentially eligible for the Amnesty Program are:

Criteria for units eligible "Amnesty Program" are spelled out in this Section.

- a. Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued Variance, Special Permit or Building Permit, does not qualify as a lawful, nonconforming use or structure; or
- b. Real property containing a dwelling unit or dwelling units and which have been cited by the Zoning Enforcement Officer as being in violation of the Protective (Zoning) Bylaw; and
- c. The property owner has the burden of demonstrating to the Building Commissioner that the criteria in either Subsection 1.a. and/or b. above have been satisfied.
- d. If any dwelling unit or units identified herein are occupied during the period of time when amnesty is in effect, said unit must be inspected by the Building Commissioner or designee and found to be in conformance with the State Building Code and State Sanitary Code.

2. Program Qualification

The procedure for qualifying units that meet the threshold criteria for the Amnesty Program is as follows:

The conditions for units qualifying for the program are outlined in this Section.

- a. The unit(s) must either be a single unit accessory to an owner occupied single-family dwelling or one or more units in a multi-family dwelling where there exists a legal multi-family use but one or more units are currently unpermitted;
- b. The property owner must agree that if s/he receives a Special Permit, the unit(s) for which amnesty is sought will be rented to an *income eligible* person or family and shall further agree that rent (including utilities) shall not exceed an *affordable price*.
- c. The property owner must agree, that if s/he receives a Special Permit, that s/he will execute a *deed restriction* in accordance with Section VII. 2-2 for the unit(s) for which amnesty is sought, prepared by the Town of Chatham, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to an *income eligible* person or family.
- d. A person is deemed "not to be proceeding diligently" if s/he does not receive a Special Permit within 12 months from the date of the admission by real property owners that the property may be in violation of the Zoning Bylaw of the Town, or as such time extended by mutual agreement of the ZBA and the Applicant.

3. Program Procedure - The procedure for obtaining amnesty is as follows:

This new Section establishes the program procedures and relationship with zoning enforcement.

- a. No zoning enforcement shall be undertaken against any property owner who demonstrates that s/he meets the Amnesty Program threshold criteria under

Subsection C.1a. and/or b. and further demonstrates that s/he is proceeding in good faith to comply with the procedures to obtain a Special Permit.

- b. Any protection from zoning enforcement under this Section shall terminate when:
1. A written determination by the Building Commissioner is issued under the applicable criteria of this Section cannot be satisfied; or
 2. It is determined that the property owner is not proceeding diligently with his/her Special Permit application; or
 3. The property owner's Special Permit application is denied.

E. Achievement of the 10% Goal

At such time that the Town of Chatham achieves the goal of having ten percent (10%) of the Town's year round housing stock considered *affordable* under Chapter 40B as indicated on the *Subsidized Housing Inventory (SHI)* the Zoning Board Appeals may deny projects submitted under this section based upon the presumption that the local need for *affordable* housing has been satisfied.

Upon achieving the Town, County and State affordable housing goal of 10%, this Section provides the ZBA with the ability deny projects on the basis local affordable housing needs have been achieved.

2-5. Affordable Dwelling Units, Mandatory Inclusionary Provision

~~Permitted by Special Permit approved by the Planning Board as a Special Permit Granting Authority in all zoning districts except Municipal (M), Municipal Conservancy, (MC) and Industrial (I).~~

Change proposed to section heading to more accurately reflect the planning approach

A. Intent

The intent of this section is to ensure that residential developments include some affordable housing to meet the needs of Chatham's residents and workers. This section sets forth standards and conditions for affordable housing units required in developments. The standards are intended to be consistent with those recommended by the Cape Cod Commission for use by towns. It is also intended that ~~"affordable"~~ units required and approved under this ~~bylaw~~Section remain *affordable*.

Definitions

~~**Affordable**, used in reference to dwelling units means intended for rental or sale to low or moderate income people and in conformance with the requirements of this Bylaw in regard to price and income level of tenant (s).~~

Definitions moved to beginning of Section 2-1.

~~**Affordable Price**, used in reference to a dwelling unit, means a monthly rent or mortgage which does not exceed 30% of the gross monthly income of a household whose income is 70% of the median income for Barnstable County as reported by the United States Department of Housing and Urban Development (HUD).~~

~~Income Eligible~~ means that the household income of a person or family does not exceed 80% of the median income, adjusted for household size, for Barnstable County as reported by the United States Department of Housing and Urban Development (HUD).

~~Ten Percent~~, used in reference to the mandatory provision of affordable dwelling units, shall mean one tenth rounded to the nearest whole number. For example, any number below

B. Mandatory Provision of Affordable Dwelling Units

1. Applicability

~~1.5 would be rounded to 1, while any number between 1.5 and 1.9 would be rounded to 2.~~

Mandatory provisions of affordable dwelling units

~~This section of the Protective Bylaw applies to any residential subdivision or division of land resulting in 10 or more buildable lots or any residential multi family development containing 10 or more dwelling units.~~

Permitted by Special Permit approved by the Planning Board as the Special Permit Granting Authority (SPGA) in all zoning districts except, Municipal (M), Municipal Conservancy, (MC) and Industrial (I):

In any development that is subject to the regulations hereunder, ~~ten~~ twenty percent (20%) of all dwelling units, whether in new, rehabilitated or converted buildings, shall be *affordable* housing units. The calculation of the required number of affordable housing dwelling units to be provided under this Section shall be rounded to the nearest whole number. For example, any number below 1.5 would be rounded to 1, while any number between 1.5 and 1.9 would be rounded to 2. Nothing in this Section shall preclude a developer from providing more affordable housing units than required hereunder.

- a. **Division of Land** - This Section shall apply to any residential division of land into five (5) or more buildable lots, and shall require a Special Permit from the Planning Board acting as the Special Permit Granting Authority (SPGA). A Special Permit shall be required for land divisions under Section VI. D. - Open Space Residential Development as well as for "conventional" divisions allowed by MGL Ch. 41 Sec. 81-L and Sec. 81-U, including those divisions of land that do not require subdivision approval (Approval Not Required plans).

- b. **Multiple Units** - This Section shall also apply to any residential multi-family development or redevelopment resulting in five (5) or more dwelling units, and shall require a Special Permit from the Planning Board. In cases where there are existing units, the calculation of the number of units is based upon the cumulative number of units proposed/approved, not the net number of units.

New heading proposed to improve navigation

Since the adoption of this "Inclusionary Zoning" Section in 2005, no affordable units have been created as a result. Based upon the limited availability of larger vacant parcels for development, a higher "Inclusionary" percentage (increased from 10% to 20%) and a lower unit threshold (reduced from 10 to 5) is proposed based upon size of recent developments.

Corresponding with the proposed percentage and threshold changes, proposed changes to the "Density Bonus" section are intended to provide a mechanism for developers to work within this bylaw and further Town goals of creating additional affordable housing.

Additionally, this Section has been restructured to differentiate more clearly between proposed lots and units

2. Segmentation

Developments shall not be segmented to avoid compliance with this Section. Divisions of land that would cumulatively result in an increase by five (5) or more residential lots or dwelling units above the number of existing on any parcel or any contiguous parcels in common ownership twenty-four months earlier are subject to applicable portions and requirements of this Section. For purposes of this Section, a division of land shall mean any division of land subject to MGL Ch. 41, Sections 81K-81GG.

This new Section is proposed to more clearly establish when a project is potentially being "segmented" to avoid this regulation.

3. Special Permit Review Criteria

In addition to addressing the applicable Special Permit criteria in Section VIII.C.4., when considering an Affordable Dwelling Unit, Mandatory Inclusionary Provision Special Permit, with or without a Density Bonus, the Planning Board shall evaluate, as appropriate, the following:

Title Amended for consistency purposes.

- a. **Impact on Neighborhood Character.** How new *affordable* housing fits neighborhood character. In existing residential neighborhoods, housing should be built at scale, density, and character consistent with existing development patterns.
- b. **Size and Materials Provided.** *Affordable* units shall be generally comparable in size and materials to dwelling units in the surrounding neighborhood or the project in which it is located.
- c. **Parking.** Two (2) parking spaces for each affordable unit shall be provided.
- d. **Affordability Requirements.** The *affordable* units shall, comply with the applicable provisions of Section VII. 2-2. for rental projects and Section VII. 2-3. for homeownership projects.

Applicable review criteria to guide the Planning Board in reviewing projects in this "Inclusionary" section have been added reinforce the consideration of neighborhood context in reviewing projects with or without a density bonus.

Specific requirements relative to the location, appearance, and phasing of construction of the *affordable* unit(s) may be imposed as a condition of approval of a Special Permit for a development subject to this section.

Language moved from former Section 2-5.E. 2. & 3.

The Planning Board shall solicit comments and recommendations on the proposal from other Town regulatory agencies which have jurisdiction in the particular case, and prior to acting upon the application, shall consider any comments and recommendations received from such agencies.

C. Methods of Providing Affordable Dwelling Units

1. On Site Units

The *affordable* units ~~may~~shall be constructed or rehabilitated on the locus of the development and sold or rented to an *income-eligible* household at an *affordable* price, ~~or unless~~ the Planning Board ~~may~~, in its discretion, approves one or more of the following methods, or any combination thereof, for the provision of *affordable* units. Notwithstanding the above, when the Planning Board is considering a Density Bonus, *affordable* units required by this Section shall be provided on- site.

Proposed language changes establish the preference for the construction of affordable units within proposed projects. Additionally, these revisions indicate that when considering a Density Bonus the required affordable unit(s) shall be provided on site.

2. Off-Site Units-

An equivalent number of *affordable* housing units may be constructed or rehabilitated on another site in the Town of Chatham, and sold or rented to an *income-eligible* household at an affordable price. All requirements that apply to on-site provision of *affordable* units shall apply to off-site *affordable* units. In addition, the location of the off-site units shall be approved by the Planning Board as an integral element of the development review and approval process.

3. ~~Land Donation-~~

An applicant may offer, and the Planning Board may accept, subject to approval of the Board of Selectmen, a donation of land in fee simple, on or off-site, that the Planning Board determines is suitable for the construction of an equivalent number of *affordable* housing units. Land donated for this purpose shall be subject to a restriction assuring its use for *affordable* housing. Prior to accepting land as satisfaction of the requirements of the ~~Bylaw~~Section, the Planning Board may require the applicant to submit an appraisal or opinion of value to determine the suitability of the land for an equivalent number of *affordable* housing units.

4. Fee in Lieu of Units-

The Planning Board may allow a develop~~ment~~er of non-rental dwelling units to make a cash payment to the Town through its Affordable Housing Trust Fund for each *affordable* unit required by these regulations. The cash payment per unit shall be equal to ~~three (3)~~seven (7) times the annual income of an *income-eligible* household of four.

Fee In Lieu Payment:

Proposed increase from 3 (\$172,050) to 7 (\$401,450) times AMI (currently \$57,350) provides adequate funds for construction of a unit vs. purchasing one at an affordable price, which are rarely available on the market, as a result of Chatham's high median house price (\$597,500 – 2007) for all sales - condos and one-family dwellings.

~~Any development which creates or is phased to create 10 or more dwelling units within a 5-year period shall be subject to these requirements.~~

~~The *affordable* units provided under this section may be in addition to the number of units allowed on the property under the other provisions of this Bylaw, as a bonus. If the Planning Board approves a density bonus and the applicant proposes to pay an equivalent fee in lieu of units, the fee in lieu of *affordable* units shall not exceed six and one-half (6.5) times the annual income of an *income-eligible* household of four.~~

~~A guarantee that the requirements of this section will be met shall be provided to the Zoning Officer prior to the issuance of a building permit for any dwelling units or further dwelling units. Specific requirements relative to the location, appearance, and phasing of construction of the *affordable* unit(s) may be imposed as a condition of approval of a special permit for a development subject to this section.~~

~~The Planning Board shall solicit comments and recommendations on the proposal from other Town regulatory agencies which have jurisdiction in the particular case, and prior to acting upon the application the Planning Board shall consider any comments and recommendations received from such agencies.~~

This sentence is moved to new Applicability Sub-Section above and expanded upon to address the issue of "Segmentation"

These three paragraphs have been moved to Sub-Section E. - Review Criteria below.

D. Conditions for approval of affordable dwelling units

Proposed changes to this Section are intended to improve navigation by adding headings.

Dwelling units required to be *affordable* or approved under this ~~Bylaw~~Section with the condition that they are *affordable* shall be subject to the requirements of this section.

1. ~~*~~ Affordable Price

Any dwelling unit required or approved under this ~~Bylaw~~Section as *affordable* shall meet the definition of an *affordable price* as set forth in this ~~Bylaw~~Section. Certification by the LPA that the price is an affordable price shall be provided to the Zoning Enforcement Officer.

2. Income Eligibility Certification ~~by the Chatham Housing Authority that the price is an affordable price shall be provided to the Zoning Enforcement Officer.~~

~~*~~ At the time of the sale of any dwelling units approved or required under this ~~Bylaw~~Section as *affordable*, certification by the ~~Chatham Housing Authority~~LPA shall be provided to the Zoning Enforcement Officer that the purchaser is *income eligible* as defined in this ~~Bylaw~~Section.

3. ~~*~~ Deed Restriction

A *deed restriction* shall be placed upon the property limiting the rental rate in accordance with the provisions of Section VII. 2-2., Affordable Rental Units or the resale price in perpetuity in accordance with the provisions of Section VII. 2-3., Affordable Homeownership Units. The rental rate shall be restricted to meet the definition of *affordable price* under this ~~Bylaw~~Section. The formula for setting the resale price shall be as follows; at the time of the original purchase, a multiplier shall be determined by dividing the sales price by the ~~median income~~AMI for the Barnstable County MSA as provided by the ~~United States~~federal Department of Housing and Urban Development (HUD). ~~At the time of sale of the unit, the multiplier times the median income at the time of the sale (HUD).~~ At the time of resale of the unit, the multiplier times the ~~median income~~AMI ~~at the time of the sale~~ shall be the maximum sale price.

References to corresponding sections on the specific restrictions applicable to rental and ownership units added as a cross reference to program details.

4. ~~*~~ Resale Agreement

If a unit is offered for sale, the purchaser and the Town shall sign an agreement setting forth the procedure for establishing a resale price to keep the unit *affordable* upon its sale and granting the Town the right of first refusal should the seller fail to enter into a bona fide purchase and sale agreement with an *income eligible* buyer within ninety (90) days of the date that the unit is originally offered for sale.

5. ~~*~~ Rentals

Any dwelling approved under this ~~Bylaw~~Section as an *affordable* rental unit shall be rented subject to a minimum 12-month lease.

6. ~~*~~ Rental Certification

For any dwelling unit required or approved as an *affordable* rental under this ~~Bylaw~~Section, certification by the ~~Chatham Housing Authority~~LPA that the

tenants occupying or purchasing the *affordable* units are *income eligible* and the rent charged them is affordable per the definitions in this BylawSection must be submitted to the Zoning Enforcement Officer at the time of the signing of the lease and on an annual basis thereafter. Such certification is also required upon any change in tenants or rent charged. Dates of occupancy shall be stated in the certification.

7. * Chatham Preference

In the permitting and certification process, owners of *affordable* units created under this BylawSection shall be encouraged to rent or sell the units to Chatham residents, workers, or people with ties to the community.

8. Requirements Guarantee

A guarantee that the requirements of this section will be met shall be provided to the Zoning Enforcement Officer prior to the issuance of a building permit for any dwelling units or further dwelling units.

Moved from Former Section E below.

E. Review Criteria

1. Additional Units

The affordable units provided under this Section may be in addition to the number of units allowed on the property under the other provisions of this Section, as a bonus.

Formerly Proposed Sub-Section should be deleted in this location. However please note the following changes for its content: 1. Deleted in its entirety as it related to previous Density Bonus language, 2. first sentence moved to 2-5. D. Conditions (above) and second section moved to Section 2-5.B.3. Special Permit Review Criteria and 3. also moved to Section 2-5.B.3. Special Permit Review Criteria

2. Requirements Guarantee

A guarantee that the requirements of this section will be met shall be provided to the Zoning Enforcement Officer prior to the issuance of a building permit for any dwelling units or further dwelling units. Specific requirements relative to the location, appearance, and phasing of construction of the affordable unit(s) may be imposed as a condition of approval of a Special Permit for a development subject to this section.

3. Comments and Recommendations

The Planning Board shall solicit comments and recommendations on the proposal from other Town regulatory agencies which have jurisdiction in the particular case, and prior to acting upon the application, shall consider any comments and recommendations received from such agencies.

E. General Provisions

1. Rules and Regulations

The Planning Board shall be charged with administering this Section and shall promulgate Inclusionary Housing Rules and Regulations, including but not limited to submission requirements and procedures, application and review fees, minimum requirements for a marketing plan, and documentation required by the Town to qualify the affordable housing units for listing on the Chapter 40B Subsidized Housing Inventory.

General Provisions changed to E. as a result of striking Section above.

The intent of this new Sub-Section is to provide additional provisions the help attain the broad affordable housing goals articulated at the beginning of Section 2.

2. Layout of Units

Affordable dwelling units shall be dispersed throughout the development and shall be generally comparable to market-rate units in terms of quality, room size, bedroom distribution, and external appearance.

3. Marketing Plan

The selection of qualified purchasers or qualified renters shall be carried out under a marketing plan approved by the LPA. The marketing plan must describe how the applicant will accommodate local preference requirements established by the Board of Selectmen, and federal or state fair housing laws.

4. Purchase of Units

Developers of rental projects may sell affordable units to the Town of Chatham, the Chatham Housing Authority, or to any non-profit housing development organization that serves the Town of Chatham, in order that such entity may carry out the steps needed to market the affordable housing units and manage the choice of buyers.

5. Inventory Documentation

Developers shall be responsible for providing applications and other documentation required by the Department of Housing and Community Development (DHCD) to assure that the affordable housing units are or will be approved for listing on the Chapter 40B Subsidized Housing Inventory.

F. Density Bonus

~~Density shall be limited as set forth in the provisions of the Protective Bylaw unless the Planning Board approves a density bonus for additional **affordable** dwelling units. A density bonus may be granted by the Planning Board, provided the applicant furnishes a greater number of **affordable** dwelling units than the mandatory ten percent.~~

A development subject to this Section shall comply with the density and dimensional requirements set forth in Section III unless the Planning Board approves a Density Bonus. To facilitate the purpose and intent of Section VII. 2., Affordable Housing. Modifications to the dimensional requirements in any zoning district may be permitted for any project under Section 2-5, as follows:

1. Minimum Lot Area - The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to permit up to two (2) additional units on the lot for each one (1) Affordable Unit required in this Section. No reduction of minimum lot area shall be granted for those affordable units which exceed the minimum number required in this Section.
2. Special Permit - The Planning Board may issue a Special Permit with a Density Bonus only after it finds that the additional dwelling unit(s) permitted will not create a development significantly different in scale, density, or placement on the lot than can be found on adjacent lots or in the surrounding neighborhood. In making its findings, the Planning Board may consider granting other kinds of dimensional relief and the extent to which such relief varies from the requirements of the zoning district that the proposed development may require.

Density Bonus:

Density Bonus Section changed from G. to F. as a result of striking Section above.

The existing "Density Bonus" approach to allow a bonus only when additional affordable units are provided is contrary to other "Inclusionary" bylaws where additional market units are allowed to offset the costs associated with providing affordable units in a development.

Providing the Planning Board with the ability to consider a Density Bonus where appropriate, is intended to provide a more "workable" provision and result in the creation of affordable housing units. The ultimate discretion on whether or not a bonus is granted (if any) lies with the Planning Board.

Example: A proposed five (5) unit development on a 100,000 sq. ft. lot in an R20 Zoning District, would require one (1) of the units to be affordable. The Planning Board would be able to grant a "density bonus" of up to two (2) units [one (1) required unit x two (2) bonus units]. This would result in a total project maximum of seven (7) units, with a unit mix of six (6) market rate units and one (1) affordable unit. This example equates to a "Bonus Density" increase of 40% over the as of right density.

Last sentence redrafted for consideration since previous meeting

Section 3 – Antique Shop, Art Gallery or Gift Shop – Unchanged

4. **Apartment, Incidental to a Commercial Use ~~and~~ Industrial Use**

Permitted in the Industrial I Districts and allowed by special permit in the General Business (GB) Districts as follows:

- a. The use shall comply with the dimensional requirements stipulated in Appendix II for the commercial use provided:
 1. The area of any lot shall provide not less than ten thousand (10,000) square feet of buildable upland for each apartment; except for Affordable Apartment, Incidental to a Commercial Use or Industrial Use where the area of any lot shall provide not less than five thousand (5,000) square feet of buildable upland for each apartment.
 2. In the GB District there shall be no more than four (4) apartments in one (1) building; except for Affordable Apartment, Incidental to a Commercial Use or Industrial Use, there shall be no more than six (6) apartments in one (1) building.
 3. There shall be living quarters ~~of~~ not more than two (2) stories above finish grade and none below such level.
 4. In the Industrial District, there shall be no more than one (1) two-bedroom apartment per lot incidental to the commercial or industrial use; except for Affordable Apartment, Incidental to a Commercial Use or Industrial Use, there shall be no more than two (2) apartments per lot.
 5. All Affordable Apartments, Incidental to a Commercial Use or Industrial Use shall be subject to the applicable requirements of Section VII 2-2.
- b. The residential use of the property shall be compatible with the nature and scale of the permitted commercial/industrial uses on the lot.

Proposed changes to Section 4 are intended to create opportunities for the production of affordable apartments incidental to commercial or industrial uses.

This revision specifies a 5,000 sq. ft. buildable upland requirement for affordable units.

Affordable units beyond four (4) market units may also be added up to a maximum of six (6) in a building when the balance of the unit(s) is/are affordable.

No more than two (2) units would be allowed when the balance of the unit(s) is/are affordable

Affordable apartments would be created in accordance with the applicable criteria of Section 2

Guest Units:

The proposed striking of the word additional as it relates to land area requirements (of an additional 20,000 s.f. of buildable upland) for a "guest unit" (which is occupied by a member of the immediate family occupying the principal dwelling and limited to one (1) bedroom) is intended to increase the opportunities for Chatham residents to provide housing for family members. While current state regulations currently prohibit including units rented to family members on the SHI,

Section 5 (Boarding or Rooming House, Tourist Home) through Section 11.1 (Group Dwelling) - Unchanged

12. **Guest House**

Permitted in the R60, R40, R20, R20A and SB Districts and by Special Permit in the GB Districts as follows:

- a. There shall be not more than one guest house on any one lot, such guest house may be separate from or a part of the principal dwelling, garage or barn. However, the floor area of a guest house shall not exceed fifty percent (50%) of the floor area of the principal dwelling.
- b. A guest house may be used by the owner or occupant of the principal dwelling or his or her guests, or it may be rented.

- c. For such guest house, the lot on which it is constructed shall have at least twenty thousand (20,000) square feet of buildable upland in addition to the minimum lot size required for the zoning district in which it is located. No guest house shall have more than two (2) bedrooms.
- d. When such guest dwelling unit is part of the principal dwelling and is occupied by a member of the immediate family occupying the principal dwelling, the Zoning Board of Appeals may grant a Special Permit to waive the ~~additional~~ land area requirements for such a one (1) bedroom guest ~~unit~~house. Such a duly approved guest house may be converted to an Affordable Apartment Incidental to a Single Family Dwelling in accordance with the applicable requirements of Section VII. 2-2.

these types of units often provide “de facto” affordable housing within the community for family members in various life situations that prevent them from being able to obtain housing in Town.

With the large number of existing parcels in Town that do not meet the required minimum lot areas for their Zoning District (73% in R20, 82% in R30, 70% in R40 and 93% in R60) before adjusting for buildable upland, very few homeowners, even assuming the ZBA waives “... the additional land area requirement...” can take advantage of the “guest unit” provision as drafted.

This new provision would allow a homeowner with an “in-law” apartment created with a Special Permit to convert the unit to an affordable accessory apartment